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In re Application of :
Roberts, Claire et al. :
Application No.: 10/789,105 :
Filing Date: 27 February 2004 :
Attorney Docket No.: LP-02-019 :
For: REGULATION OF CYTOTROPHOBlast
CELL DIFFERENTIATION AND CELL
MIGRATION :
: DECISION ON
: PETITION
: UNDER 37 CFR 1.182

This decision is in response to applicants' "Petition to Accord 35 U.S.C. §371 Filing Status," filed on 12 September 2005. It has been treated as a petition under 37 CFR 1.182.

BACKGROUND

On 30 August 2002, applicants filed international application PCT/AU02/01226, which claimed a priority date of 30 August 2001. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 01 March 2004 (29 February 2004 was a Sunday).

On 27 February 2004, applicants filed utility patent application transmittal, which was accompanied by, *inter alia*, utility filing fee, a specification and a preliminary amendment.

On 25 May 2004, the Office mailed a Notification to File Missing Parts and a Notice Regarding Benefit/Priority Claim(s).

On 12 September 2005, applicants filed the instant petition to convert.

DISCUSSION

This decision is in response to applicants' petition filed on 12 September 2005, requesting to convert the above-captioned application to a national stage application of PCT/AU02/01226.

Further, a review of the above-captioned application file verifies that it was properly filed under 35 U.S.C. 111(a). The USPTO Notice published in the Official Gazette at 1077 OG 13 entitled "Minimum Requirements for Acceptance of Applications Under 35 U.S.C. 371 (the National Stage of PCT)" states, in part, the following:

The Patent and Trademark Office is continuing to receive application papers which do not clearly identify whether the papers (1) are being submitted to enter the national stage of the Patent Cooperation Treaty (PCT) under 35 U.S.C. 371 or (2) are being filed as a regular national application under 35 U.S.C. 111 . . .

If there are any conflicting instructions as to which sections of the statute (371 or 111) is intended the application will be accepted under 35 U.S.C. 111.

Here, the reference to 37 CFR 1.53(b) at the top of the transmittal letter filed on 27 February 2004, is an instruction to process the application pursuant to 35 U.S.C. 111(a). Thus, the application was correctly accepted as a filing under 35 U.S.C. 111(a) pursuant to 1077 OG 13. Nevertheless, applicants filed the instant petition to convert to a national stage application which is treated as a petition under 37 CFR 1.182. The \$400.00 petition fee has been paid.

Applicants allege that MPEP 1893.03(a) favors them and that the transmittal letter Form PTO/SB/05 should not be a conflicting instruction. However, MPEP 1893.03(a) states: "a conflicting instruction will be present, for example, where applicant includes in the initial submission under 35 U.S.C. 371, a 'Utility Patent Application Transmittal' (Form PTO/SB/05)".

U.S. Statutes and Regulations do not make specific provision for conversion of the application to a national phase and as such the Office does not grant such petitions for conversion as a mere matter of course. The Office will only grant such petitions upon a showing by applicant of sufficient cause (e.g., the loss of patent rights) where no other remedy is available.

In the present petition, applicants have not made a showing that a loss of patent rights would occur if the above-captioned application is a filing under 35 U.S.C. 111(a).

CONCLUSION

As discussed above, the petition under 37 CFR 1.182 is **DISMISSED** without prejudice.

This application is being forwarded to Technology Center 1600 for continued processing.



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